

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 2007-31
)	
BRIAN ALEXANDER,)	
)	
Defendant.)	
_____)	

ATTORNEYS:

Nelson L. Jones, AUSA
St. Thomas, U.S.V.I.
For the Plaintiff,

Jesse A. Gessin, AFPD
St. Thomas, U.S.V.I.
For the defendant.

MEMORANDUM OPINION

GÓMEZ, C.J.

Before the Court is defendant Brian Alexander's ("Alexander") motion for revocation or amendment of the Magistrate Judge's pretrial detention order, entered on September 21, 2007. For the reasons stated below, the Court will deny Alexander's motion.

I. FACTS

On June 7, 2007, Alexander was indicted on one count of aiding and abetting in the acquisition of firearms. The

government moved for pretrial detention of Alexander pursuant to title 18, section 3142 of the United States Code ("Section 3142").

The Magistrate Judge conducted a hearing on the government's pretrial detention motion on September 19, 2007. Alexander was represented by counsel at the detention hearing. Officer Warrington Tyson, Jr. ("Officer Tyson") of the Virgin Islands Police Department ("VIPD") testified on behalf of the government. Officer Tyson testified that Alexander was imprisoned on Tortola, British Virgin Islands (the "BVI") after being convicted of possession of marijuana and for illegally entering the BVI. Officer Tyson further testified that Alexander pled guilty to those charges and paid a \$4,000 fine. Officer Tyson further testified that Alexander was released into the custody of the VIPD by the BVI police after the VIPD faxed a wanted poster of Alexander to the BVI police. Officer Tyson further testified that the BVI police advised him that they had found drug paraphernalia, marijuana, and files on a computer containing the statute of limitations for firearms offenses. Officer Tyson further testified that Alexander had two cellular phones and a valid United States passport when he was released into the VIPD's custody.

Alexander's mother, Merina F. Leathem ("Leathem"), testified

at the hearing on Alexander's behalf. Leathem testified that she has lived in St. Thomas for 20 years. She is a naturalized citizen of the United States. Leathem further testified that she owns a three-bedroom house on St. Thomas valued at \$470,000. Leathem stated that she lives in the house with her husband and that Alexander has been living there for the last two years. Leathem indicated that she would be willing to use her house as a surety if Alexander were released on bail. Leathem further testified that she would be willing to serve as the third-party custodian for Alexander and would report Alexander if he violated the terms of his release.

On September 21, 2007, the Magistrate Judge ordered Alexander to be detained pending trial. On September 27, 2007, Alexander moved to appeal the Magistrate Judge's detention order.

II. DISCUSSION

A. Standard of Review

Title 18, section 3145(b) of the United States Code ("Section 3145(b)") provides that a person who has been ordered to be detained pending trial by a magistrate judge may move for revocation or amendment of the detention order in the court with original jurisdiction over the matter. 18 U.S.C. § 3145(b) (1990). "When the district court acts on a motion to revoke or amend a magistrate's pretrial detention order, the district court

acts *de novo* and must make an independent determination of the proper pretrial detention or conditions for release." *United States v. Rueben*, 974 F.2d 580, 585-86 (5th Cir. 1992); *cf.* *United States v. Delker*, 757 F.2d 1390, 1394 (3d Cir.1985) (holding that the Bail Reform Act, 18 U.S.C. § 3145(b), *et seq.*, contemplates *de novo* review by the district court of a magistrate's order for bail pending trial). Under this standard, "a district court should not simply defer to the judgment of the magistrate. . . ." *United States v. Leon*, 766 F.2d 77, 80 (2nd Cir. 1985) (noting that a reviewing court "should fully reconsider a magistrate's denial of bail").

In conducting a *de novo* review of a magistrate judge's pretrial detention order, the court may rely on the evidence presented before the magistrate judge. *See United States v. Koenig*, 912 F.2d 1190, 1193 (9th Cir. 1990) ("[T]he district court is not required to start over in every case"); *United States v. Chagra*, 850 F. Supp. 354, 357 (W.D. Pa. 1994) (noting that the court may incorporate the records of the proceedings and the exhibits before the magistrate judge). Though not required to do so, the reviewing court may, in its discretion, choose to hold an evidentiary hearing if necessary or desirable to aid in the determination. *See Koenig*, 912 F.2d at 1193; *see also United States v. Lutz*, 207 F. Supp. 2d 1247 (D.

Kan. 2002) ("De novo review does not require a de novo evidentiary hearing.").

B. Pretrial Detention Standard

Pretrial detention of a criminal defendant will be ordered only if, after a hearing upon motion by the government, a "judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community." 18 U.S.C. § 3142(e) (2006). The determination of whether any conditions of release can reasonably assure the defendant's appearance in court and the safety of others is based on the following four factors:

(1) the nature and seriousness of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person and the community that would be posed by the person's release.

United States v. Traitz, 807 F.2d 322, 324 (3d Cir. 1986) (citing 18 U.S.C. § 3142(g) ("Section 3142(g)")); see also *United States v. Coleman*, 777 F.2d 888, 892 (3d Cir. 1985).¹ To justify

¹ The sub-factors relevant to the consideration of a defendant's characteristics and history include:

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

pretrial detention, the government must establish risk of flight by a preponderance of the evidence, and dangerousness by clear and convincing evidence. See *United States v. Himler*, 797 F.2d 156, 160-61 (3d Cir. 1986); 18 U.S.C. § 3142(f); *Traitz*, 807 F.2d at 324. Risk of flight and danger to the community are "distinct statutory sources of authority to detain," and proof of one ground for detaining a defendant "is quite enough," making any discussion of the other ground "irrelevant." *United States v. Daniels*, 772 F.2d 382, 383 (7th Cir. 1985).

III. ANALYSIS

In light of the factors to be considered in deciding whether to order pretrial detention, the Court has conducted a *de novo* review of the evidence presented at the September 19, 2007 hearing before the Magistrate and in the parties' briefs.²

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law

18 U.S.C. § 3142(g)(3).

² On October 4, 2007, this Court ordered the parties to submit briefs of their respective positions on this matter by October 11, 2007. On October 9, 2007, Alexander moved to continue motion practice, stating that he intended to engage private counsel and that a notice of substitution of counsel would be filed shortly. To date, no notice of substitution has been filed. Both parties submitted briefs pursuant to the Court's October 4, 2007 order.

Alexander has been charged with aiding and abetting in the acquisition of four firearms for transportation into the Virgin Islands. Firearms-related offenses are "serious offenses" for pretrial detention purposes. *See United States v. McIntosh*, 229 F. Supp. 2d 431, 435 (D.V.I. 2002). *See also United States v. Shall*, Crim. No. 04-16J, 2006 U.S. Dist. LEXIS 35450 (W.D. Pa. June 1, 2006) (finding that placing firearms into the stream of commerce "can't be tolerated" because the firearms "could have been used in serious offenses and crimes"), *aff'd* 224 Fed. Appx. 183 (3d Cir. 2007).

The weight of the evidence against Alexander is strong. The government has evidence that Alexander wired money to his brother to purchase firearms. The government asserts that it also has surveillance photographs of an associate of Alexander purchasing firearms in Florida using that money. The government further asserts that Alexander's brother and associate were arrested and pled guilty to the purchase of firearms in the Northern District of Florida.

The Court finds that Alexander has strong family ties on St. Thomas. He is a longtime resident of St. Thomas and has a job on St. Thomas. His mother, stepfather, girlfriend and small child all live on St. Thomas. Additionally, Alexander's mother is willing to put up her only real property as security for his

release. Alexander was not detained for nearly six weeks after being indicted in this action and nevertheless stayed on St. Thomas.

However, Alexander's ties to St. Thomas are not dispositive. Indeed, notwithstanding those ties, Alexander abruptly left for the BVI in July, 2005, several weeks after he is alleged to have committed the crime in this action. The evidence shows that Alexander told his mother that he did not know how long he would be away. He left behind his job, his home, and his family, including his infant child. Alexander did not communicate with his family for at least several weeks during that time. Moreover, while in the BVI, Alexander was convicted of possession of marijuana and illegal entry. Finally, there is no evidence that Alexander planned to return to St. Thomas. Instead, he was brought back to St. Thomas by the BVI police and released into the custody of the VIPD.

Alexander's domestic criminal history also does not support his release. In addition to his guilty pleas in the BVI, Alexander was convicted in 1999 in Jacksonville, Florida of aggravated battery with a weapon and was sentenced to four years in prison and two years of community control. He violated the terms of his community control and was sentenced to an additional six months in prison. In September, 2004, Alexander was charged

in a separate action with possession of a firearm and unauthorized possession of a firearm and ammunition.

The Court finds that the government has met its burden of showing that Alexander is a flight risk. *See United States v. Maull*, 773 F.2d 1479, (8th Cir. 1985) (detaining a defendant who had previously fled from prosecution, was found to have secreted a passport, and had contacts with persons living abroad who could aid his flight).

Because the government has shown that Alexander is a flight risk, the Court need not address Alexander's dangerousness.

IV. CONCLUSION

For the foregoing reasons, the motion for revocation or amendment of the Magistrate Judge's pretrial detention order will be denied. An appropriate order follows.

Dated: October 26, 2007

S_____
CURTIS V. GÓMEZ
Chief Judge

Copy: Hon. Geoffrey W. Barnard
Nelson L. Jones, AUSA
Jesse A. Gessin, AFD
U.S. Probation Office
U.S. Marshals
Lydia Trotman
Claudette Donovan

United States v. Brian Alexander
Criminal No. 2007-31
Memorandum Opinion
Page 10

Olga Schneider
Gregory F. Laufer